No. 79-6853

In the Supreme Court of the United States

OCTOBER TERM, 1980

LEAH LYNN PARRISH WEBB, PETITIONER,

v.

JAMES THOMAS WEBB, RESPONDENT.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF GEORGIA

JOINT APPENDIX

EDWARD R. ZACKER
1421 Union Street
Post Office Box 10
Brunswick, Georgia 31521
912/264-7301
Counsel for Petitioner

MANLEY F. BROWN
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Macon, Georgia 31201
912/742-8981
Counsel for Respondent

PETITION FOR CERTIORARI FILED JUNE 27, 1980.
CERTIORARI GRANTED OCTOBER 6, 1980.

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RELEVANT DOCKET ENTRIES

1977

September 22. Hearing held and Final Divorce Decree entered, Superior Court of Berrien County, Georgia.

1979

March 8. Petition to Establish, Enforce, and Modify Foreign Judgment filed in Circuit Court, Alachua County, Florida.

March 8. Restraining Order entered, Circuit Court, Alachua County, Florida.

March 23. Complaint filed, Superior Court of Berrien County, Georgia.

April 19. Hearing held and Final Judgment Establishing and Enforcing Out of State Judgment entered, Circuit County, Alachua County, Florida.

April 24. Motion to Dismiss and Answer filed, Superior Court of Berrien County, Georgia.

April 26. Amendment to Motion to Dismiss and Answer filed, Superior Court of Berrien County, Georgia.

May 10. Hearing held in Superior Court of Berrien County, Georgia.

June 21. Order entered by Superior Court of Berrien County, Georgia.

July 19. Notice of Appeal to Supreme Court of Georgia filed.

1980

April 8. Opinion entered by Supreme Court of Georgia.

April 14. Motion for Rehearing in Supreme Court of Georgia filed.

April 22. Motion for Rehearing denied by Supreme Court of Georgia, Dissenting Opinion on Appeal filed.

IN THE Superior Court, Berrien County, Georgia

No. 77-D-69

Feb adjoined Term, 1977

JAMES THOMAS WEBB

vs

LEAH LYNN PARRISH WEBB

TOTAL DIVORCE
JUDGMENT AND DECREE—NO JURY

Upon consideration of the above entitled case, no defense having been filed and no jury trial demanded by either party, on the evidence submitted it is the judgment of the Court that a total divorce be granted between the parties: that is to say, a divorce a vinculo matrimonii, upon legal principals.

IT IS THEREFORE ORDERED AND DECREED by the Court that the marriage contract heretofore entered into between the parties to said case is hereby set aside and dissolved as fully and effectually as if no such contract had ever been made and entered into.

ORDERED FURTHER, that the Plaintiff and the Defendant, formerly husband and wife, in the future be held and considered as a separate and distinct persons altogether unconnected by any nuptial union or civil contract whatsoever.

The rights and disabilities of the parties are fixed as follows: The Plaintiff shall be at liberty to marry again and the Defendant shall *also* be at liberty to marry again.

ORDERED FURTHER, that the wife's maiden name not be restored to her,

The Court awards custody of the children of the parties as follows:

> *The minor child, Shane Scott Webb, is awarded to the defendant in* accordance with agreement marked Exhibit A and made a part of this *final decree.*

The Court fixes alimony and support for the wife and children as follows:

> As spelled *out in the settlement agreement between plaintiff and* defendant above referred to as Exhibit A and made a part hereof by *reference.*

ORDERED FURTHER, that the terms of the settlement agreement between plaintiff and defendant above referred to as Exhibit A, and the terms *of this Final Decree are hereby made mandatory on plaintiff and* defendant and in in the event of failure of either plaintiff or defendant to comply with the terms of said agreement and this said decree shall be punishable by contempt of court.

ORDERED FURTHER, that the Defendant pay the costs of these proceedings,

Entered in Open Court, this the 22 day of Sept, 1977.

W.D. KNIGHT
(W.D. Knight)
Judge Superior Courts, *Alapaha Circuit*

STATE OF GEORGIA, Berrien COUNTY. Office of Clerk Superior Court.

This is to certify that the above is a true and correct copy of the Judgment and Decree of total divorce in the above stated case.

WITNESS MY OFFICIAL SIGNATURE and the SEAL OF THE COURT.

This 1st day of March, 1979

Bonnie M Moore, dpty.

Clerk Superior Court, Berrien County, Ga.

Filed in office, this 22nd day of September, 1977 Bonnie M. Moore, dpty.

ITEM 1.

ALIMONY/PROPERTY SETTLEMENT

(a) The Husband shall pay attorney's fees to Perry & Franklin, P.C. in the said divorce case, plus the court costs in said case.

(b) The Husband shall have as his part of the division of property, the following listed property: The 1973 Montego Mercury and his personal effects. The Wife shall have as her part of the division of property, all the remaining property owned by the parties hereto and her personal effects. Husband agrees to pay any and all indebtedness of Husband or Wife or Husband and Wife jointly as of June 20, 1977.

(c) Upon the above payments and surrender of property being made to the Wife, she shall have no further claim against the Husband of any kind or character, for alimony, property settlement or otherwise.

ITEM 2.

CUSTODY AND VISITATION PRIVILEGES FOR MINOR CHILDREN

The custody of the minor child of the parties, namely: Shane Scott Webb, is hereby given to Wife and reasonable visitation privileges are hereby granted to husband.

ITEM 3.

CHILD SUPPORT

Husband hereby agrees to pay $20.00 per week child support until said child reaches 18, marries or becomes otherwise welf-supporting. Said payments are to be made directly to Wife on or before 10:00 a.m. of each Saturday. Husband further hereby agrees to pay any and all reasonable medical, hospital, drug, doctor and dental bills incurred by said minor child until he shall reach the age of 18, marries or becomes self-supporting, beginning from date hereof.

ITEM 4.

ACKNOWLEDGEMENT OF SERVICE AND CONSENT TO TRIAL

The Wife hereby acknowledges service of the complaint in said case and hereby waives service of any and all papers incident to said complaint, and, based upon the foregoing agreement, the Husband and Wife agree that the Superior Court of Berrien County, Georgia, may try said case without a jury anytime after same has been filed for 30 days, in any county in the Alapaha Judicial Circuit. The parties hereto request the court to make this agreement the judgment of the court with respect to custody, visitation privileges, alimony, child support, attorney's fees, court costs, and property rights of the parties.

EXECUTED IN DUPLICATE, this 19 day of July, 1977.

Witness:	Wife:
/s/ _____	_____ (SEAL)
LARRY HARGROVE	LEAH LYNN PARRISH WEBB
Witness:	Husband:
/s/_____	_____ (SEAL)
LARRY HARGROVE	JAMES THOMAS WEBB

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT, IN AND FOR ALACHUA COUNTY, FLORIA

Case No. 79-569-CA
Division H

IN RE: The Former Marriage of:
JAMES THOMAS WEBB, HUSBAND,
and
LEAH LYNN PARRISH WEBB, WIFE.

PETITION TO ESTABLISH, ENFORCE, AND MODIFY FOREIGN JUDGMENT

COMES NOW the Petitioner, LEAH LYNN PARRISH WEBB, by and through her undersigned attorney, petitions this Court to establish, enforce, and modify a foreign judgment of divorce and custody, and says:

1. This action is brought pursuant to the authority of Sections 61.133 and 61.1332, Florida Statues (1977).

2. The parties hereto were divorced by Final Judgment of Divorce dated September 22, 1977 and entered in the Superior Court, Berrien County, Georgia, on September 22, 1977. A certified copy of said judgment of divorce is attached hereto and incorporated herein by reference.

3. This Court has jurisdiction over this cause by virtue of the authority of Section 61.1308, Florida Statutes (1977).

4. Said Final Judgment of Divorce awards permanent custody of the minor child of the parties, to-wit: SHANE S. WEBB, age 6, to the Petitioner, subject to reasonable visitation rights in the Respondent.

5. The Respondent, JAMES THOMAS WEBB, has, without legal authority or agreement, abducted said minor

child and removed him to the State of Georgia in violation of said Final Judgment of Divorce. Petitioner verily believes that unless this Court exercises jurisdiction and restrains the Respondent from such activity, that said activity will be repeated.

6. The Respondent has repeatedly and continuously refused to pay the medical and dental expenses for said minor child as ordered by the Final Judgment of Divorce.

7. It is in the best interests of the child that this Court establish the Foreign Judgment, modify the Respondent's visitation rights to restrict visitation to Alachua County, Florida, and enforce the terms of the Judgment as far as said terms refer to medical and dental payments in behalf of the minor child.

WHEREFORE, the Petitioner respectfully requests this Court will enter it's Order establishing the Foreign Judgment of Divorce enforcing the provisions of said divorce regarding medical and dental payments, and modify the visitation rights of the Respondent to prevent further removal of the child from this jurisdiction.

THREE RIVERS LEGAL SERVICES, INC.
By: /s/ _____
JEFFREY H. BARKER
Attorney for Wife
309 N.E. First Street
Gainesville, Florida 32601
(904) 372-0519

/s/ _____
LEAH LYNN PARRISH WEBB
Wife/Petitioner

STATE OF FLORIDA
COUNTY OF ALACHUA

BEFORE ME, the undersigned authority, this day personally appeared LEAH LYNN PARRISH WEBB, the Wife/Petitioner, who, after first being duly sworn, deposes and says that she has read the foregoing Petition and that each and all of the facts and matters contained

therein are true and correct to the best of her knowledge and belief.

/s/_____
LEAH LYNN PARRISH WEBB

SWORN TO and subscribed before me this 2nd day of March, 1979, A.D.

/s/_____
THOMAS R. WILLIAMS
Notary Public
State of Florida at Large

My Commission expires: Sept. 29, 1981.

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT, IN AND FOR ALACHUA COUNTY, FLORIDA

Case No.
Division

IN RE: The Former Marriage of:
JAMES THOMAS WEBB, HUSBAND,
and
LEAH LYNN PARRISH WEBB, WIFE.

MOTION FOR EMERGENCY RESTRAINING ORDER WITHOUT NOTICE

COMES NOW, the Petitioner, LEAH LYNN PARRISH WEBB, by and through her undersigned attorney, and moves this Court for a Restraining Order without Notice, and says:

1. There is now pending before this Court an action to establish a foreign decree, to enforce said decree and to modify said decree between the parties.

2. The Respondent, JAMES THOMAS WEBB, has without legal authority, abducted the minor child of the parties and removed him from the State of Florida.

3. The Petitioner verily believes that the Respondent will continue to violate the terms of the foreign decree unless he is enjoined by the Courts of this State from said activity.

4. Petitioner seeks the Restraining Order against Respondent without notice on the basis that the Respondent's abduction of the child constitutes an emergency situation, and were notice to be provided to the Respondent as to a hearing in this case, the child would be

subjected to the continuing possibility of such activity by the Respondent.

WHEREFORE, the Petitioner respectfully requests this Court will enter it's Restraining Order, enjoing the Respondent from removing the minor child of the parties beyond the jurisdiction of this State.

/s/ _____

JEFFREY H. BARKER
Attorney for Wife
Three Rivers Legal Services, Inc.
309 N.E. First Street
Gainesville, Florida 32601
(904) 372-0519

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT, IN AND FOR ALACHUA COUNTY, FLORIDA

Case No.
Division

IN RE: The Former Marriage of:
JAMES THOMAS WEBB, HUSBAND,
and
LEAH LYNN PARRISH WEBB, WIFE.

AFFIDAVIT

STATE OF FLORIDA
COUNTY OF ALACHUA

THIS DAY personally appeared before me the undersigned authority, LEAH LYNN PARRISH WEBB, the Wife in the above-styled action, who, after first being duly sworn, makes this her affidavit and states that the allegations contained herein are true and correct:

1. There has been (1) child born of the union of the parties, to-wit: SHANE S. WEBB.

2. The above-named child has lived in the following locations for the past five years:

November, 1973 to September, 1976	Jacksonville, Florida
September, 1976 to July, 1977	Nashville, Georgia
July, 1977 to November, 1977	Lakeland, Georgia
November, 1977 to January, 1979	Micanopy, Florida
January, 1979 to Present	Gainesville, Florida.

3. That the present address LEAH LYNN PARRISH WEBB, the Wife/Petitioner, is 3901 S. E. 14th Terrace, Gainesville, Florida.

4. That the present address of JAMES THOMAS WEBB, the Husband/Respondent, is 2007 Lynn Avenue, Nashville, Georgia, 32635.

5. The Affiant further states:

a. The Wife has participated in earlier litigation regarding the custody of this child in the Superior Court of Berrien County, Georgia, from July to September, 1977.

b. That there may be a pending litigation in the State of Georgia, but the Wife has not been served with any process of any other Court.

c. That the Wife knows of no other person who is not a party to these proceedings who claims to have either custody or visitation rights with respect to the above-named minor child.

Further the Affiant saith not.

/s/ _____
LEAH LYNN PARRISH WEBB

SWORN TO and subscribed before me this 2nd day of March, 1979, A.D.

/s/ _____
THOMAS R. WILLIAMS
Notary Public
State of Florida at Large
My Commission expires: Sept. 29, 1981.

(jurat omitted in printing)
(affidavit of insolvency omitted in printing)

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT, IN AND FOR ALACHUA COUNTY, FLORIDA

CIVIL ACTION
Case No. 79-569-CA
Division H

IN RE: The Marriage of:
JAMES THOMAS WEBB, HUSBAND/RESPONDENT,
and
LEAH LYNN PARRISH WEBB, WIFE/PETITIONER.

SUMMONS

THE STATE OF GEORGIA:
TO ALL AND SINGULAR THE SHERIFFS OF SAID STATE:
GREETINGS:

YOU ARE HEREBY COMMANDED to serve this summons and a copy of the petition in the above styled cause upon the respondent:

JAMES THOMAS WEBB
2007 Lynn Avenue
Nashville, Georgia 31635
-or-
Nashville Police Department
Nashville, Georgia

The respondent is hereby required to serve written defenses to said petition on petitioner's attorney, whose name and address is:

JEFFREY H. BARKER
Three Rivers Legal Services, Inc.
309 N.E. First Street
Gainesville, Florida 32601
(904) 372-0519

within 20 days after service of this summons upon that respondent, exclusive of the day of service, and to file the original of said written defenses with the clerk of said court either before service on petitioner's attorney or immediately thereafter. If a respondent fails to do so, a default will be entered against that respondent for the relief demanded in the petition.

WITNESS my hand and the seal of said Court on March 7, 1979.

/s/ _____
A. CURTIS POWERS
Clerk Circuit Court

By: /s/ _____
JULIE E. RILEY
As Deputy Clerk

(Court Seal)

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT, IN AND FOR ALACHUA COUNTY, FLORIDA

Case No. 79-569-CA
Division "H"

IN RE: The Marriage of:
JAMES THOMAS WEBB, HUSBAND/RESPONDENT,
and
LEAH LYNN PARRISH WEBB, WIFE/PETITIONER.

AFFIDAVIT OF SERVICE OF PROCESS

STATE OF GEORGIA
COUNTY OF BERRIEN

On this day, before me, an officer duly authorized by law to administer oaths and take acknowledgement, personally appeared Willie Bell, Deputy Sheriff who after first being duly sworn, deposes and says:

1. That on the 13 day of March, 1979, he received a Summons, Petition, Affidavit, Motion for and Restraining Order to be served on JAMES THOMAS WEBB, the above named Respondent in the above-designated action.

2. That at 5:00 P.M. on the 13 day of March 1979, he did serve on the above-named JAMES THOMAS WEBB the above-specified documents by delivering a true and correct copy of the same to him at Residence, Lynn Ave, Nashville, Ga.

FURTHER THE AFFIANT SAITH NOT.

/s/ _____
WILLIE BELL

SWORN TO and subscribed before me this 14 day of March 1979, A.D.

/s/ _____
DORIS H. GASKENS
Notary Public

(Seal)

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT, IN AND FOR ALACHUA COUNTY, FLORIDA

Case No. 79-569-CA
Division: "H"

IN RE: The Former Marriage of:
JAMES THOMAS WEBB, HUSBAND,
and
LEAH LYNN PARRISH WEBB, WIFE.

RESTRAINING ORDER

THIS CAUSE having come to be heard upon Motion for Restraining Order Without Notice, the Court having received the testimony of the Petitioner, and the Court being fully advised as to the premises, the Court finds as follows:

1. The State of Florida has jurisdiction over the custody of the minor child of the parties.

2. The Respondent, JAMES THOMAS WEBB, has removed the child from the State of Florida.

3. The State of Florida and the State of Georgia are both members of that group of states whose child custody actions are governed by the Uniform Child Custody Jurisdiction Act.

It is thereupon ORDERED AND ADJUDGED that:

1. The Respondent, JAMES THOMAS WEBB, is enjoined and restrained from violating the custody order as contained in that certain Divorce Judgment entitled "JAMES THOMAS WEBB vs. LEAH LYNN PARRISH WEBB, Superior Court, Berrien County, Georgia, Case Number 77-D-69, dated September 22, 1977."

2. The Respondent, JAMES THOMAS WEBB, shall return the minor child, to wit: SHANE J. WEBB, to the custody of the Petitioner, LEAH LYNN PARRISH WEBB, immediately.

3. The Respondent, JAMES THOMAS WEBB, is restrained from removing the minor child from Alachua County, Florida, until further order of this Court.

Further, it is requested that the Courts of the State of Georgia cooperate in the enforcement of this Order and join with the Courts of this state in retaining jurisdiction over this controversy in the State of Florida, pursuant to the Uniform Child Custody Jurisdiction Act.

BOND IS WAIVED

DONE and ORDERED in Chambers at Gainesville, Alachua County, Florida this 8 day of MARCH, 1979, A.D.

/s/ _____
RAGREEN, JR.
Circuit Judge

Copies furnished to:

Jeffrey H. Barker
Attorney for Petitioner

STATE OF FLORIDA
COUNTY OF ALACHUA

IN RE: Webb & Webb

I, A. Curtis Powers, Clerk of the Circuit Court, Eighth Judicial Circuit of Florida, in and for Alachua County, do hereby certify that the above and foregoing are true and correct copies of the Original as the same appears of record in Civil Action 79-569-CA, one of the Public Records my Office. WITNESS my hand and the Official Seal of said Circuit Court at Gainesville, Florida, this 2, day of April, 1979.

OFFICIAL SEAL

A. CURTIS POWERS
Clerk Circuit Court

By JIEFIE E. RIFEY
Deputy Clerk

IN THE SUPERIOR COURT OF BERRIEN COUNTY GEORGIA

Civil Action
File Number 79-C-43

JAMES THOMAS WEBB, PLAINTIFF

vs.

LEAH LYNN PARRISH WEBB, DEFENDANT

COMPLAINT

Plaintiff files this Complaint and shows the following:

1.

Defendant is a resident of Florida, and is subject to the jurisdiction of this Court as this Court is the Court of original jurisdiction which handed down the Order of Divorce and child custody award which this petition seeks to change and modify. The residence of the subject child, Shane Scott Webb, is Berrien County, Georgia.

2.

By virtue of final decree entered September 22, 1977 in Case No. 77-D-69, Superior Court of Berrien County, Georgia, Defendant was awarded the legal custody of the following minor child: Shane Scott Webb—Age: 6 years. Attached hereto is a copy of decree.

3.

Defendant is the mother and Plaintiff is the father of said child.

4.

Subsequent to said decree, the mother has moved about the States of Georgia and Florida since the divorce of she

and Plaintiff and she has not provided a stable home environment for said child. There has been periods of time since the said divorce that Plaintiff did not know the whereabouts of his said minor child because of the Defendant constantly moving about.

On or about the 17th day of February, 1979, the Defendant left said six year old child in Gainesville, Florida with her twelve year old daughter by a previous marriage. Said two children were left by the Defendant in a house in Gainesville, Florida for a period of three days while Defendant went to Miami, Florida. The authorities in the State of Florida contacted the Plaintiff during said three-day period and requested Plaintiff to pick up his minor child as he was not being properly cared for and that he was being neglected and left in an unfit situation.

5.

Said change of circumstances materially affects the welfare of said child.

6.

As a result of such change of circumstances, Defendant has become an unfit parent.

As a result of such change of circumstances, the Plaintiff should be granted the custody of said child and the above stated decree should be modified accordingly.

PERRY & FRANKLIN, P. C.

/s/ _____
W. S. PERRY
Attorney for Plaintiff

P.O. Box 647
Nashville, Georgia 31639
(912) 686-5591

(jurat omitted in printing)
(Exhibit omitted—printed supra)

IN THE SUPERIOR COURT OF BERRIEN COUNTY GEORGIA

Civil Action
File Number 79-C-43

JAMES THOMAS WEBB, PLAINTIFF

vs.

LEAH LYNN PARRISH WEBB, DEFENDANT

RULE NI SI

The foregoing Petition for change of custody having been read and considered, let the same be filed.

Let the Defendant show cause before this Court at the Courthouse in Nashville, Georgia on the 10th day of May, 1979 at 1:30 o'clock p.m. why the custody of the subject child should not be granted to Plaintiff.

/s/ _____
MILDRED MOORE
Clerk, Berrien County Superior Court

STATE OF GEORGIA SUPERIOR COURT
BERRIEN COUNTY

Civil Action, File No. 79-C-43

JAMES THOMAS WEBB, PLAINTIFF,

vs.

LEAH LYNN PARRISH WEBB, DEFENDANT.

SUMMONS

To the above-named Defendant: Leah Lynn Parrish Webb.

You are hereby summoned and required to file with the Clerk of said Court and serve upon W.S. Perry of Perry & Franklin, P.C.

Plaintiff's attorneys, whose address is
P.O. Box 647
Nashville, Georgia 31639

an answer to the complaint which is herewith served upon you, within 30 days after service of this summons, upon you, exclsuive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

This the 23 day of March, 1979.

/s/ _____
BONNIE M. MOORE, dpty
Clerk of Court.

To the Defendant upon whom this Summons is served:

This copy of Summons was served upon you on the ____ day of _____, 19___ Sheriff of_____ County.

I hereby certify that I served a copy of this summons together with a copy of COMPLAINT & copy of RULE NI

SI on the defendant herein, LEAH LYNN PARRISH WEBB. On the 29 day of March, 1979, at 6:20 p.m.

L.J. HINDERY, SHERIFF
Alachua County, Florida
By /s/_____
L. STARLING
Deputy Sheriff

IN THE CIRCUIT COURT OF THE EIGHTH JUDICIAL CIRCUIT, IN AND FOR ALACHUA COUNTY, FLORIDA

Case No. 79-569-CA
Division "H"

IN RE: The Former Marriage of:
JAMES THOMAS WEBB, HUSBAND,
and
LEAH LYNN PARRISH WEBB, WIFE.

FINAL JUDGMENT ESTABLISHING AND ENFORCING OUT-OF-STATE DECREE

THIS CAUSE having come to be heard before the Court upon Petition to Establish, Enforce and Modify Foreign Judgment, the Husband having been served with regular process of the Court, and a Default having been entered against him, the Court having entertained the testimony of the Wife, and the Court being otherwise fully advised as to the premises, the Court finds as follows:

1. This Court has jurisdiction over the parties and subject matters of this action.

2. The Wife and minor child are permanent, bona fide residents of the State of Florida, and as such are entitled to the benefits afforded them under current Florida Law.

3. It is in the best interests of the child that the visitation rights afforded to the Husband be modified in order to provide for specific, predictable scheduling.

IT IS THEREUPON Ordered and Adjudged as follows:

1. That certain Final Decree of Divorce entered by the Superior Court, Berrien County, Georgia, Case Number 77-D-69, dated September 22, 1977, and filed with this

Court, is hereby established as if it were a judgment of this Court.

2. The minor child of the parties, to-wit: SHANE SCOTT WEBB, is a resident of the State of Florida, not withstanding the fact that he is currently physically in the State of Georgia.

3. The Husband's visitation rights as to the minor child are modified to the extent that the Husband shall now have the right to visit with the child and have the child visit with him for a period of one weekend per month, weekend being defined as that time from Friday evening at 6:00 p.m. until Sunday evening at 8:00 p.m. with the exception of the legally established three (3) day federal holiday weekends, at which time said weekend shall be extended to include the additionally twenty-four (24) hour period for said holiday. In addition, the Husband shall have the right to have the child visit with him for a period of six (6) consecutive weeks during the normal summer school vacation periods, and for a period of one (1) week during the normal two (2) week Christmas holiday vacation.

4. In all other respects, the judgment of the State of Georgia as it incorporates an earlier agreement by the parties shall remain in full force and effect in this State.

5. This Court will retain jurisdiction over the parties of this action for enforcement of this decree.

DONE and ORDERED in Chambers in Gainesville, Alachua County, Florida this 18th day of April, 1979, A. D.

/s/ _____
OSSE R. FAGAN
Circuit Judge

Copies furnished to:
Jeffrey H. Barker
James Thomas Webb

IN THE SUPERIOR COURT OF BERRIEN COUNTY
STATE OF GEORGIA

Civil Action No. 79-C-43

JAMES THOMAS WEBB, PLAINTIFF,

vs.

LEAH LYNN PARRISH WEBB, DEFENDANT.

MOTION TO DISMISS AND ANSWER

MOTION TO DISMISS

Comes now LEAH LYNN PARRISH WEBB, Defendant in the above styled action, and moves this Court to dismiss this action on the following grounds:

(a) The Court lacks jurisdiction over the subject matter of this action in that it represents an attempt to modify a previous award of this Court without complying with all necessary requirements for the prosecution of a new and independent action.

(b) The Court lacks jurisdiction over the person of Defendant as she is a resident of the State of Florida. As the legal custodian of the minor child of the parties herein, the Defendant's residence is the residence of the minor child as well and the Court lacks jurisdiction over the person of the child as well as Defendant.

(c) Venue is improper in this action as this action must be brought in the residence of Defendant, who is a Florida resident.

(d) There has been insufficient process and/or insufficient service of process in that Defendant has been served at her residence in another state, and such service is neither allowed by statute, court order, or the Constitution of the State of Georgia.

(e) Plaintiff's complaint fails to state a claim upon which relief should be granted.

(f) On or about March 13, 1979, Defendant herein perfected service upon Plaintiff in the case of In Re: The Former Marriage of: JAMES THOMAS WEBB, Husband and LEAH LYNN PARRISH WEBB, wife, Civil Action No. 79-569-CA, which action had been properly filed in Alachua County, Florida, the residence of Defendant and the minor child. Subsequent to said complaint being served, Plaintiff herein filed this action. This Court should therefore dismiss this action on the grounds that Defendant herein had already begun an action which was still pending at the time this action was filed, and no stay of such action has ever been granted. A copy of said action is attached as Exhibit "A" and hereby incorporated by reference for all purposes.

(g) Proceeding with this action will result in great inconvenience to the Defendant as defending this action will require substantial travel by Defendant, and the expenditure of significant amounts of money beyond the resources of Defendant.

(h) It is in the interest of the minor child herein that the courts of the State of Florida retain jurisdiction of this matter consistent with the action filed in Florida as mentioned above in Paragraph (f). The true home of the child is Florida, and the child has been brought to Georgia only because of the illegal seizure of the child by the Plaintiff herein. All evidence relating to the recent care, protection, training, and personal relationships of this child are in the State of Florida.

(i) The Petitioner herein has wrongfully taken the child from the State of Florida contrary to the final decree of divorce between these parties entered on September 22, 1977, and thus brought the child to the State of Georgia; the Court should therefore decline jurisdiction, if such jurisdiction exists, over this matter.

(j) The Plaintiff herein has not complied with the mandatory requirements of Ga. Code § 74-510 in the prosecution of this action.

(k) This action is clearly contrary to the statutory mandates of Ga. Code § 24-304b(a), which requires that such actions be prosecuted only in the county of residence of the legal custodian of the child, who is the Defendant herein.

(l) Plaintiff herein, acting as a physical custodian only, should not be allowed to maintain this action for change of custody, while he is illegally withholding custody of the minor child in violation of the decree of divorce between these parties, entered in September of 1977.

ANSWER

1.

Defendant admits that she is resident of Florida, but denies that this Court has jurisdiction over her in this matter. In further response, Defendant states that this Court cannot exercise any jurisdiction over Defendant by virtue of the fact that this Court entered the original divorce decree between these parties. Defendant further denies that Shane Scott Webb, minor child, is a resident of Berrien County, and states that he is presently in Berrien County only because has has been brought there by Plaintiff in violation of court ordered custody.

2.

Defendant admits the allegations of Paragraphs 2 and 3 of Plaintiff's complaint, but denies all of Paragraph 4.

3.

In response to Paragraph 5 of Plaintiff's complaint, Defendant denies that there has been any material change in circumstances since the final decree of divorce between the parties to this action.

4.

Defendant denies the allegations contained in Paragraph 6 of Plaintiff's complaint.

5.

Defendant denies each and every other allegation in Plaintiff's complaint not hereinbefore admitted or specifically denied.

FIRST DEFENSE

6.

Plaintiff's complaint fails to state a claim upon which relief may be granted.

SECOND DEFENSE

7.

The Court lacks subject matter jurisdiction over this action.

THIRD DEFENSE

8.

The Court lacks jurisdiction over the person of Defendant in this action.

FOURTH DEFENSE

9.

Venue is improper in Berrien County, Georgia, as Defendant is a resident of the State of Florida.

FIFTH DEFENSE

10.

There has been insufficient service of process upon Defendant in that Defendant was a non-resident of this State when served with a copy of the complaint in this action.

SIXTH DEFENSE

11.

This action is barred because a similar action concerning custody of the minor child herein had already been filed by Defendant in the State of Florida in accordance with Florida law and service in such action had been perfected upon Plaintiff herein before the filing of this action.

SEVENTH DEFENSE

12.

Prosecution of this action in the State of Georgia will be extremely inconvenient to Defendant as a forum for litigating the question of custody of the parties' minor child.

EIGHTH DEFENSE

13.

Prosecution of this action in this State is contrary to the spirit and requirements of the Uniform Child Custody Jurisdiction Act.

NINTH DEFENSE

14.

Prosecution of this action in this State is contrary to the spirit and requirements of the Georgia Child Custody Jurisdiction Act.

TENTH DEFENSE

15.

This action is contrary to the stated public policy of this State, which prohibits parties, such as Plaintiff, who have unlawfully seized minor children contrary to court order, from maintaining actions such as these or prosecuting such actions in a forum which is not the residence of the Defendant.

WHEREFORE, Defendant prays:

(a) That this action be dismissed;

(b) That all costs of this action be assessed against the Plaintiff;

(c) For such other and further relief as this Court deems just and proper.

/s/ _____

ROY M. SOBELSON
Attorney for Defendant

1421 Union Street
Post Office Box 10
Brunswick, Gerogia 31520
912/264-7301

(jurat omitted in printing)
(Exhibit "A" omitted—printed *supra*)
(certificate of service omitted in printing

IN THE SUPERIOR COURT OF
BERRIEN COUNTY STATE OF GEORGIA

Civil Action No. 79-C-43

AMENDMENT

JAMES THOMAS WEBB, PLAINTIFF,

vs.

LEAH LYNN PARRISH WEBB, DEFENDANT.

AMENDMENT PRIOR TO ENTRY OF PRE-TRIAL ORDER

Comes now LEAH LYNN PARRISH WEBB, prior to entry of any pre-trail order in this action, and amends her Motion to Dismiss and Answer as follows:

(A) By adding to her Motion to Dismiss, as Paragraphs (m) through (u), the following:

(m) On or about March 8, 1979, Defendant herein filed an action against Plaintiff herein as detailed in Paragraph (f) above.

(n) Said action was filed in the State of Florida pursuant to Sections 61.133, 61.1308, and 61.1332, Florida Statutes (1977) and other relevant sections of the Uniform Child Custody Jurisdiction Act, as adopted by the State of Florida. (61.1302 et seq.) A copy of said statute is attached hereto as Exhibit "B" and hereby incorporated by reference.

(o) Service in said action was perfected upon Plaintiff herein, JAMES THOMAS WEBB, under authority of 48.194, 48.193 and 61.1302 et seq. A copy of said statute is attached hereto as Exhibit "C" and hereby incorporated by reference.

(p) In said action, Defendant herein sought to have the Circuit Court of Alachua County, Florida, Establish, Enforce and Modify the Final Judgment of Divorce between the parties herein, which was granted on September 22, 1977 in Berrien County, Georgia.

(q) Said action also sought to obtain a Restraining Order restraining Plaintiff herein from removing the parties' minor child from the State of Florida.

(r) On or about March 8, 1979, JAMES THOMAS WEBB, Plaintiff herein was restrained from violating the custody order as contained in the Final Judgment and Decree of Divorce between these two parties.

(s) Despite said Court order, Plaintiff herein continues to hold the parties' minor child contrary to said order and the mandates of the Final Decree of Divorce.

(t) On or about April 18, 1979, the Circuit Court of Alachua County, Florida, entered a Final Judgment Establishing and Enforcing Out-of-State Decree. A copy of said judgment is attached hereto as Exhibit "D" and hereby incorporated by reference.

(u) Plaintiff herein, by holding the parties' minor child at present, continues to violate the mandates of that order, as well as the Final Judgment and Decree of Divorce of September 22, 1977.

(B) By adding the following paragraphs 16 through 27, following Paragraph 15 of her original answer:

ELEVENTH DEFENSE

16.

Plaintiff herein continues to act contrary to the order of the Superior Court of Berrien County, entered September 22, 1977, and also is acting in violation of the April 18, 1979, order of the Circuit Court of Alachua County, Florida (Case No. 79-569-CA), which order should be accorded full faith and credit by this Court, as it was made pursuant to relevant Florida law, as stated above.

FIRST COUNTERCLAIM

17.

Defendant repeats and realleges Paragraphs (a) through (u) of her Motion to Dismiss and 1 through 16 of her Answer as if fully realleged herein.

18.

Plaintiff in this action is a resident of Berrien County, Georgia and is subject to the jurisdiction of this Court.

19.

By virtue of the final divorce decree between the parties herein, JAMES THOMAS WEBB, was ordered to pay the sum of $20.00 per week child support for the support of Shane Scott Webb, custody of whom was granted to Defendant herein.

20.

By virtue of said divorce decree, JAMES THOMAS WEBB was also ordered to pay any and all reasonable medical, hospital, drug, doctor and dental bills for said child.

21.

Since on or about December 1, 1978, Plaintiff herein has failed and willfully refused to pay said child support or any of the minor child's health expenses.

22.

Plaintiff herein is in wilful contempt of this Court's order of September 22, 1977, and should be attached for contempt until such payments and expenses are paid by Plaintiff.

SECOND COUNTERCLAIM

23.

Defendant repeats and realleges Paragraphs (a) through

(u) of her Motion to Dismiss and Paragraphs 1 through 22 of her Answer as if fully realleged herein.

24.

Defendant herein is the legal custodian of Shane Scott Webb, by virtue of a final decree of divorce entered by the Superior Court of Berrien County, on September 22, 1977.

25.

The Plaintiff herein is illegally detaining and withholding custody of the minor child from Defendant in Berrien County, Georgia, and has illegally held said child since on or about February 17, 1979.

26.

Plaintiff herein has no cause or justification for withholding said minor child from the custody and control of Defendant herein.

27.

Defendant herein demands that a writ of habeas corpus issue requiring Plaintiff herein to appear and produce said child before this Court and show cause why custody should not be restored to Defendant.

(c) By adding to her Prayer for Relief, the following:

(d) That Plaintiff herein be adjudged in contempt of Court and ordered to pay all sums of child support and medical bills presently owing or otherwise be imprisoned in the common jail for said offense;

(e) That a writ of habeas corpus issue requiring Plaintiff herein to appear and produce the minor child before this Court and otherwise show cause why custody should not be restored to Defendant.

Respectfully submitted,

/s/ _____

ROY M. SOBELSON

Attorney for Defendant

1421 Union Street
Post Office Box 10
Brunswick, Georgia 31520
912/264-7301

(jurat omitted in printing)
(Exhibits "B" and "C" omitted—
Florida statutes printed in Appendix
to Petitioner's Brief on the Merits)
(Exhibit "D" omitted—printed *supra*)
(certificate of service omitted in printing)

IN THE SUPERIOR COURT OF
BERRIEN COUNTY STATE OF GEORGIA

Civil Action
File Number 79-C-43

JAMES THOMAS WEBB, PLAINTIFF,

vs.

LEAH LYNN PARRISH WEBB, DEFENDANT.

ORDER

STATEMENT OF THE CASE

This case came on for a hearing before this Court with both parties being represented by counsel. This is a complaint filed by the plaintiff to change the custody concerning one minor child, Shane Scott Webb. By virtue of a final decree entered September 22, 1977 in Case No. 77-D-69 in the Superior Court of Berrien County, Georgia, the defendant Leah Lynn Parrish Webb was awarded custody of the said child. This action has been brought by the father, James Thomas Webb, to have the custody changed over to him and the final decree in this matter modified accordingly. The father contended at the hearing on this matter that there had been a change of circumstances materially affecting the welfare of the child and as a result that the defendant had become an unfit parent.

The defendant contends that this court lacks jurisdiction of the subject matter in this action and over person and that the venue is improper and that the action should have been brought in Florida.

The defendant further contends that the plaintiff did not comply with the requirements of the Uniform Child Custody Jurisdiction Act, Chapter 74-5, of the Georgia Code.

The matter came on for a hearing before me with both sides being represented by counsel.

Defendant furthermore filed a counterclaim seeking a contempt citation against plaintiff for failure to pay child support and medical bills and seeking a Writ of Habeas Corpus.

FINDING OF FACTS

The court finds the following facts:

1.

That the minor child, Shane Scott Webb, is a resident of Berrien County, Georgia and was a resident of Berrien County, Georgia, at the time of the commencement of these proceedings.

2.

The Court further finds that the plaintiff and Father, James Thomas Webb, is a resident of Berrien County, Georgia, which is in the Alapaha Judicial Circuit. The court finds that at the hearing the plaintiff showed that subsequent to the decree handed down in Berrien County, Georgia, the mother has moved about the states of Georgia and Florida since the decree and has moved a total of six times since September, 1977 up until the time of this proceeding. The court further finds that on the 17th day of February, 1979, the defendant abandoned the six year old child in Gainesville, Florida and travelled to Miami for the weekend, and that the child was left alone in the defendant's home without adult supervision and that pursuant to a phone call from the authorities in Florida, the plaintiff travelled to Gainesville, Florida and picked up his child and returned to the State of Georgia with the child.

3.

The evidence further showed at the trial that the child was not being properly cared for by the defendant.

CONCLUSIONS OF LAW

The court finds the following conclusions of law:

1.

That this court has jurisdiction of this case under the Uniform Child Custody Jurisdiction Act, Chapter 74-5 of the Georgia Code. This court has jurisdiction under 74-504(a)(1) in that Georgia and Berrien County was the home state of the child at the time of the commencement of these proceedings.

2.

The court further finds that under Georgia Code Annotated 74-504(a)(2), it is in the best interest of the child that a Georgia Court assume jurisdiction because the child and at least one contestant have a significant connection with the State of Georgia and there is available in this State substantial evidence concerning the child's present or future care, protection, training and personal relationships. The Court further has jurisdiction under 74-504(a)(3), in that the child is physically present in this state and the child has been abandoned by his mother in Gainesville, Florida and it is necessary and it is and was an emergency to protect the child because he had been subjected to and threatened with mistreatment and abuse and was otherwise neglected by his mother.

3.

The court further finds that from the evidence introduced at the trial, it is in the best interest of this child for him to remain with his father and for the final decree entered in this matter on September 22, 1977, to be modified and the custody awarded to the plaintiff in this case. The evidence showed at the hearing that the father is remarried and that he owns a home in Nashville, Georgia, and that he is employed as a policeman with the Nashville Police Department and that the home life of the father is more conducive to raising a child than the home life of the mother and that the father is more stable.

4.

The Court further finds that the plaintiff has not willfully refused to pay child support or medical bills as provided for by the final decree. The court further finds that the plaintiff produced the child at the hearing.

ACCORDINGLY, IT IS HEREBY ORDERED AND ADJUDGED that the final decree entered in this matter on September 22, 1977, Civil Action Case No. 77-D-69, is hereby modified and the custody of Shane Scott Webb is hereby awarded to James Thomas Webb, the plaintiff in this case, because it is in the best interest of the child to award the custody to the said plaintiff.

The first and second counterclaim of the defendant in her answer is hereby denied as the evidence did not show that the father willfully refused to pay child support or any of the minor child's health expenses and this court does not hold the father in contempt. As to the second counterclaim in the defendant's answer, the Writ of Habeas Corpus is hereby denied as the court finds that the plaintiff was not illegally detaining and withholding custody of the said minor child from the defendant.

SO ORDERED THIS 21st day of JUNE, 1979.

/s/ _____

(W.D. Knight)

W.D. KNIGHT
Judge of Superior Court
Alapaha Judicial Circuit

Copies mailed by the Court
to:

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IN THE SUPERIOR COURT OF BERRIEN COUNTY
STATE OF GEORGIA

Civil Action No. 79-C-43

JAMES THOMAS WEBB, PLAINTIFF,

v.

LEAH LYNN PARRISH WEBB, DEFENDANT.

NOTICE OF APPEAL

1.

Notice is hereby given that LEAH LYNN PARRISH WEBB, Defendant named above, hereby appeals to the Supreme Court of Georgia from the order of this Court of June 21, 1979, in which this Court ordered custody of the parties' minor child to be transferred to Plaintiff and denied Defendant's counterclaims for contempt and a writ of habeas corpus.

2.

Appeal is made to the Supreme Court of Georgia pursuant to Georgia Code § 6-701 (Acts 1965, p. 18; Acts 1968, pp. 1072, 1073; Acts 1975, pp. 757, 758). Appeal is taken to the Supreme Court of Georgia rather than to the Court of Appeals for the reason that one of several issues raised in this action is an adverse ruling on Defendant's claim for habeas corpus, a claim for which exclusive appellate jurisdiction lies in the Supreme Court. (Ga. Const. Art. VI, § II, ¶ IV, Ga. Code § 2-3104)

3.

The Clerk shall include everything from the record of this case.

4.

A reporter's transcript of the proceedings will be filed for inclusion in this record on appeal.

This 18 day of July, 1979.

/s/ _____
ROY M. SOBELSON

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912/264-7301

/s/ _____
JOHN L. CROMARTIE, JR.
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Leah Webb

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8th Floor
The Bona Allen Building
Atlanta, Georgia 30303
404/656-6021

(certificate of service omitted in printing)

IN THE SUPREME COURT
STATE OF GEORGIA

Case No. 35703

LEAH LYNN PARRISH WEBB, APPELLANT,

v.

JAMES THOMAS WEBB, APPELLEE.

ENUMERATION OF ERRORS

I.

The Court erred in failing to dismiss this action for lack of personal jurisdiction over Defendant as she was and is a bona fide resident of Florida. (R-59-62; See T-1-11, 41, 83, 92, 93, 94, 95, 113, 116; D's E-6)

II.

The Court erred in failing to find that Defendant is and was a resident of Florida, therefore not subject to the jurisdiction of the Court. (R-59-62)

III.

The Court erred in failing to dismiss this action as it contravenes the public policy of this State, the Uniform Child Custody Jurisdiction Act (Ga. Code § 74-501 *et seq.*) and the Georgia Child Custody Intrastate Jurisdiction Act (Georgia Code § 23-301b et seq.), in that the physical custodian of the parties' minor child was allowed to relitigate custody while unlawfully holding the child awarded to Defendant. (R-16, 17, 59, 60; T-1-11)

IV.

The Court erred in finding that it had jurisdiction of this case because Georgia had become the "home state" of the

child under the Uniform Child Custody Jurisdiction Act, Ga. Code §§ 74-504(a)(1) and 74-503(e). (R-60)

V.

The Court erred in finding that the minor child who is the subject of this action is and was a resident of Berrien County, Georgia. (R-60)

VI.

The Court erred in failing to find the Florida decree of April 18, 1979, a valid order in a prior pending action, give such full faith and credit, enforce it by ordering Plaintiff to comply with it in all respects, and dismiss this action. (R-59-62)

VII.

The Court erred in failing to dismiss this action for the failure of Plaintiff to comply with the mandatory filing requirements of the Uniform Child Custody Jurisdiction Act, Ga. Code § 74-510. (R-16, 59)

VIII.

The Court erred in exercising jurisdiction over this matter under Ga. Code § 74-504(a)(3) which looks to the presence of a minor child, since the presence of the minor child in this State was due solely to the wrongful actions of Plaintiff. (R-61; T-21, 25, 49, 67, 74, 75, 91)

IX.

The Court erred in finding that the Defendant had abandoned her minor child on February 17, 1979. (R-60, 61)

X.

The Court erred in finding that the minor child was not being properly cared for by Defendant, and in failing to make fact findings in support of such conclusion. (R-60, 61)

XI.

The Court erred in finding that the minor child had been subjected to and threatened with mistreatment and abuse and was otherwise neglected by his mother. (R-61)

XII.

The Court erred in finding that there had been a change of circumstances materially affecting the welfare of the minor child and the Defendant had become an unfit parent. (R-59, 61)

XIII.

The Court erred in finding that it is in the best interest of the minor child to remain with his father, and in modifying the earlier custody award in conformance with this finding. (R-61, 61)

XIV.

The Court erred in failing to grant Defendant's writ of habeas corpus inasmuch as the Defendant had proven the existence of a lawful custody decree, the willful disregard of that decree by Plaintiff, and a denial of rightful possession of her child. (R-62; T-21, 25, 49, 74, 75, 91, 127)

XV.

The Court erred in failing to find that Plaintiff had willfully refused to pay child support payments due Defendant and in thereby failing to hold the Plaintiff in contempt. (R-61; T-59, 60, 69, 76, 91, 118)

XVI.

The Court erred in failing to decline jurisdiction over this action because it was litigated in a forum inconvenient to Defendant. (R-16; T-98-100)

XVII.

The Court erred in failing to grant Defendant's request for expenses incurred in defending this action in accordance with Ga. Code § 74-509. (T-98-101)

XVIII.

The Court erred in failing to grant any visitation rights to Appellant in conjunction with transferring permanent custody to Appellee. (R-59-62)

STATEMENT OF JURISDICTION

Appeal is made to the Supreme Court of Georgia pursuant to Ga. Code § 2-3104 (Georgia Constitution Art. VI, Sec. II, Paragraph IV); Georgia Code § 6-701 (Acts, 1965, p. 18; 1968, pp. 1072, 1073; 1975, pp. 757, 758). Appeal is taken to the Supreme Court rather than the Court of Appeals because Appellant seeks review of an unfavorable ruling on her claim for a writ of habeas corpus. This appeal is prosecuted without regard to Ga. Code § 6-701.1, however, as the final judgment from which movant appeals was entered before July 1, 1979, the effective date of § 6-701.1. (Acts 1979, pp. 619, 622, Section 5).

/s/ _____
ROY M. SOBELSON

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/s/ _____
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IN THE SUPREME COURT OF GEORGIA

35703. WEBB *v.* WEBB.

Clarke, J.

Decided: April 8, 1980

This case calls for an interpretation of certain provisions of Georgia's Uniform Child Custody Jurisdiction Act, Code Ann. § 74-501, et seq. The mother appeals an order of the Superior Court of Berrien County modifying a previous final decree of divorce by changing custody from the mother to the father. The court also denied the mother's counterclaim for contempt and her application for a writ of habeas corpus.

The evidence authorized a finding that subsequent to the entrance of a final decree of divorce entered in Berrien County September 22, 1977, giving custody of the minor child to the mother, the mother moved some six times and finally established residency near Gainesville, Florida. On February 17, 1979, the mother left the six-year old child of the parties without adult supervision at her home and flew to Miami for a weekend. Having been contacted by Florida authorities, the father went to Florida, picked up the child and returned to his home in Berrien County, Georgia.

On March 8, 1979, the wife filed an action in Alachua County, Florida, praying for an injunction for the purpose of enforcing the Georgia decree and seeking an order limiting visitation rights of the father. On March 23, 1979, before the issuance of a permanent order in the Florida action, the father filed a complaint in Berrien County, Georgia, asking that the original Georgia decree be modified to change custody of the minor child to him. The mother counterclaimed for contempt and sought a writ of habeas corpus. Subsequent to the filing of the complaint in Georgia by the father, and prior to any hearing in Georgia on the matter, the Florida court entered a final order on April 18, 1979, establishing the Georgia decree as the judgment of the Florida court and modifying the father's visitation rights.

The Superior Court of Berrien County heard evidence on the father's complaint on May 10, 1979, and on June 21, 1979, entered an order changing custody to the father and ruling that the father was not incontempt as alleged by the counterclaim. The mother's counterclaim for habeas corpus was likewise denied. The mother appeals from this order of the Superior Court of Berrien County.

(1) The mother contends that Georgia was not an appropriate or convenient forum for determination of the custody of the child because of insufficient contacts between the parties and this State. While it is true that the child was in Florida with the mother under a valid original decree of the Berrien County court giving custody to the mother, we find that the Georgia court was authorized under the evidence to find that the father retrieved the child in the face of an emergency situation created by the mother. The circumstances of the child's retrieval by the father were sufficient to afford Georgia jurisdiction under Ga. Code Ann. § 74-504(a) (3).

(2) The mother also argues that the pendency of the Florida action preempted Georgia jurisdiction. The action was pending in Florida at the time the father filed his suit, and while the father did not properly inform the Georgia court of this fact, this information was fully supplied to the Georgia court by the mother in her motion to dismiss. This fact placed a duty upon the trial court to confer with the Florida court with a view toward determining the appropriate forum. Code Ann. § 74-507. This was not done. Correspondingly, the Florida court, having notice in the mother's pleadings that an action might be pending in Georgia, was under a duty to confer with the Georgia court. There is nothing in the record before this court to indicate any effort on the part of the Florida court to fulfill this duty prior to entering its final judgment.

Among the primary purposes of the Uniform Child Custody Jurisdiction Act is to avoid overlapping adjudication and to prevent judgment races. In this case, neither state made a contribution toward that goal. The Georgia court exercised its jurisdiction with knowledge of the case in

Florida. The Florida court entered its final order with notice that an action might be pending in Georgia.[1] Neither court consulted the other.

The action required of a court before assuming jurisdiction or conducting a hearing in a custody proceeding is that the court determine whether an action is pending in another state. Code Ann. § 74-507. As subsections (b) and (c) clearly reveal, the crucial determination by the court is whether at the time it assumes jurisdiction another court is presently exercising jurisdiction over the issue of custody of the child. In the present case, at the time of the hearing on May 10, 1979, on the mother's motion to dismiss for lack of jurisdiction and upon the case in chief, the Georgia court had before it the final order of the Florida court entered April 18, 1979, concluding the Florida action. No additional inquiry was necessary, it being apparent that the Florida action had been concluded before the Georgia court exercised jurisdiction, although after the Georgia petition was filed. An investigation at that point would have been futile, and it is clear that the law does not require a useless act. Had the Georgia proceeding been dismissed, there could have been no resolution of the custody dispute by any court unless a new lawsuit were brought. This result would be contrary to principles of judicial economy and orderly administration of justice and would have done nothing to advance the purpose of § 74-507, which is the prevention of jurisdictional conflicts between the states. Consequently, we find that the pendency of the Florida action at the time the Georgia action was filed did not preempt the jurisdiction of the Georgia court.

(3) The mother also assigns error in the court's finding that there had been a material change in circumstances affecting the welfare of the child so that custody should be changed to the father. In making the determination whether there has been a material change in circumstances affecting the child, the trial court is vested with

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[1]The duty of a party to inform the court of any custody proceeding in any other state continues during the entire proceeding. Code Ann. § 74-510(c).

broad discretion which will not be disturbed on appeal unless abused. *Wrede v. Beuke*, 221 Ga. 778 (147 SE2d 324) (1966); *Mallette v. Mallette*, 220 Ga. 401 (139 SE2d 322) (1964). We find that the trial court did not abuse its discretion in finding it in the best interest of the child that custody be awarded to the father.

The remaining enumerations of error are without merit.

Judgment affirmed. All the Justices concur except Justices Jordan, Hill and Marshall, who dissent.

IN THE SUPREME COURT
STATE OF GEORGIA

Case No. 35703

LEAH LYNN PARRISH WEBB, APPELLANT,

vs.

JAMES THOMAS WEBB, APPELLEE.

MOTION FOR REHEARING

Comes now Appellant LEAH LYNN PARRISH WEBB, and moves this Court for rehearing on its April 8, 1980, affirmance of the Berrien County Superior Court's decision. Appellant asserts that the opinion of April 8, 1980, not only ignores relevant Georgia precedent in this action, but also is based on an incorrect and dangerous interpretation of the Uniform Child Custody Jurisdiction Act. (Ga. Code § 74-501 *et seq.*) (Hereinafter UCCJA.)

(argument on motion for rehearing omitted in printing)

This 14th day of April, 1980.

/s/ _____
ROY M. SOBELSON
Attorney for Appellant

35703. WEBB v. WEBB.

HILL, Justice, dissenting.

The mother left her six year old son in the care of his 13 year old step-sister for a weekend. The mother's cousins, who lived next door, were looking after the children. While such conduct may not be proper child care, it does not constitute abandonment or an emergency. The father brought the child back to Georgia on February 18, 1979, and did not file this suit until March 23, over a month later.

The majority find (division 1, supra) that the Georgia court had jurisdiction under Code Ann. § 74-504(a) (3). That section provides that "A court of this State which is competent to decide child custody matters has jurisdiction to make a child custody determination by initial or modification decree if: . . . (3) The child is physically present in this State and (A) the child has been abandoned or (B) it is necessary in an emergency to protect the child because he has been subjected to or threatened with mistreatment or abuse or is otherwise neglected or dependent." This is § 3(a) (3) of the Uniform Child Custody Jurisdiction Act.

To avoid "child snatching" of allegedly abandoned children, or children found in a situation alleged to be an emergency, I would hold that § 3(a) (3) of the UCCJA, Code Ann. § 74-504(a) (3), supra, gives jurisdiction to a court of that state where the child is physically present when the alleged abandonment or emergency is discovered by his or her parent or person claiming the right to custody. That would be the Florida court in this case. In my view the majority has condoned child snatching contrary to the landmark decision in *Mathews v. Mathews*, 238 Ga. 201 (232 SE2d 76) (1977).

I respectfully dissent to this return to the old ways. I am authorized to state that Jordan and Marshall, JJ., join in this dissent.

Supreme Court of the United States

No. 79-6853

LEAH LYNN PARRISH WEBB, PETITIONER,

v.

JAMES THOMAS WEBB

ON PETITION FOR WRIT OF CERTIORARI TO the Supreme Court of the State of Georgia.

ON CONSIDERATION of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

October 6, 1980

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